JOE T. MAESTAS

IBLA 98-442 Decided July 16, 1999

Appeal from a decision of the Area Manager, Taos Resource Area, New Mexico, Bureau of Land Management, rejecting class 1 color-of-title application NMNM 98989.

Affirmed as modified.

1. Color or Claim of Title: Applications

A class 1 color-of-title claim requires proof that the land has been held in good faith and in peaceful adverse possession by a claimant, his ancestors, or grantors for more than 20 years, under claim or color of title based on a document from a party other than the United States which on its face purports to convey the claimed land to the applicant or the applicant's predecessors and that valuable improvements have been placed on the land or that some part of the land has been reduced to cultivation. An applicant under the Color of Title Act has the burden of proof to establish to the Secretary of the Interior's satisfaction that the statutory requirements for purchase under the Act have been met, and a failure to carry the burden of proof with respect to one of the requirements is fatal to the application.

2. Color or Claim of Title: Applications--Color or Claim of Title: Good Faith

Good faith, as that term is used in the Color of Title Act, 43 U.S.C. § 1068 (1994), requires that a claimant and his predecessors-in-interest honestly believe that no defect exists in the title to the land claimed. In making the determination of whether the claimant honestly believed that there was no defect in title, the Department may consider the reasonableness of such a belief in light of the facts actually known to the claimant.

APPEARANCES: Joe T. Maestas, pro se.

WwwVersion

OPINION BY ADMINISTRATIVE JUDGE TERRY

Joe T. Maestas (Maestas or Appellant) has appealed from a July 16, 1998, decision of the Area Manager, Taos Resource Area, New Mexico, Bureau of Land Management (BLM), rejecting his class 1 color-of-title application NMNM 98989.

Maestas filed his application on February 5, 1996, pursuant to section 1 of the Color of Title Act, as amended, 43 U.S.C. § 1068 (1994), for approximately 30 acres of unsurveyed land described as within sec. 4, T. 20 N., R. 9 E., New Mexico Principal Meridian, New Mexico.

Under the Color of Title Act, as amended, 43 U.S.C. § 1068 (1994), a class 1 color-of-title applicant must show that the land has been held in good faith and in peaceful, adverse possession by the applicant or his predecessors-in-interest for more than 20 years. The applicant must also establish that valuable improvements have been placed on the land or that some part of the land has been reduced to cultivation. 43 C.F.R. § 2540.0-5(b); John P. & Helen S. Montoya, 113 IBLA 8, 13-14 (1990).

In its July 16, 1998, decision, BLM concluded that Maestas had failed to show a claim held in good faith and in peaceful adverse possession for more than 20 years. That conclusion was based on BLM's determination that (1) there are no improvements on the claimed 30-acre parcel, except for fences which were erected by Maestas and other grazing permittees to keep cattle out of their private lands; (2) the land has been leased by Appellant from BLM as part of a grazing allotment since 1974; (3) taxes on the claimed parcel have never been paid; and (4) there is no accurate description of the land claimed. (Decision at 1-2.)

In Appellant's Statement of Reasons (SOR) for appeal to this Board, he makes the following arguments in support of his claim:

> a. The first deed, dated December 1, 1916, shows the boundaries outlined in yellow. (My mother, Mrs Andres Maestas, widow of Andres Maestas, gave a parcel to each son, Oliby Maestas and Candido Maestas[;] hence, the description in the second deed showing Oliby A. Maestas and Candido Maestas on the north. This explains the division of the parcel of land from the December 1, 1916 deed. I was given the remainder of the parcel, which, as you can see goes up to "the hills that go [to] the Alamo Arroyo".)
>
> Please disregard the second deed description. The second deed has nothing to do with the parcel I am claiming. (This was a private purchase by my father and later left to me and is part of my present holdings. I was told to submit all my deeds; however, this deed probably confused the issue and should not be considered at all).

WwwVersion

b. The land I am claiming has the boundary stakes in place. I showed Ms. Yonemoto [BLM Investigator] the survey stake located on the Arroyo Alamo the day she was here. This stake corresponds to the description on the deed, "corre hasta las lomas altas para el sur hasta el Arroyo Alamo".

c. At the time the fence was required, BLM had not informed anyone of the boundary line. I did tell the other grazing permittees of my deed, and also told someone from BLM (I do not remember the name) that my deed described my land. My father passed away when we were all very young. It was much later that we located the stakes.

d. Very important and very significant, our neighbors knew our boundary lines. And, also very important, the permittees you speak of in your letter also knew our boundary lines. They cooperated with us in setting up the fence only in a mutual desire to obtain grazing land. At that time, we also did not have the resources to conduct our own survey, but as stated prior, I did show Ms. Yonemoto the location of the stakes.

(Please see attached signatures of permittees of La Puebla/Potrero allotment who are aware of my application and who agree with the deed description).

e. I also learned that my father had been told he should record only the irrigated land (that land which is under the ditch, and which has been recorded). At one time, this was a policy many counties used! The balance of the land was considered "dry land" and could not be planted. However, we always used it for grazing, before BLM took over. It was always considered ours. As children, I and my brothers would be sent by my father to graze the family cattle[,] sheep, horses and goats that we also had at time[s].

f. The land was never "abandoned". My father knew the deed descriptions and told my mother where the property line ended.

g. The deed has been recorded with the County of Santa Fe, however, I was told they cannot assess the acreage until I have a survey done; therefore they cannot bill me until that time.

Therefore, although I have not "possessed" the land (but my father did, and the seller before him) my deed description clearly describes the land I am claiming. I could not possess the land as BLM also claimed the same land. Secondly, improvements were made by setting up a fence, although to conform to BLM (and not based on our deed, explained in paragraphs d and f above).

(SOR at 1-2.) Appellant also included a March 3, 1997, statement (Statement) signed by nine fellow permittees that they "have no objection to

WwwVersion

Mr. Joe T. Maestas in his efforts to recover land that was owned by his family since 1919." (Statement at 1.)

We have recognized that an applicant under the Color of Title Act has the burden of proof to establish to the Secretary of the Interior's satisfaction that the statutory requirements for purchase under the Act have been met. Shirley & Pearl Warner, 125 IBLA 143, 148 (1993); John P. & Helen S. Montoya, supra; Hal H. Memmott, 77 IBLA 399, 402 (1983). The applicant must establish that each of the requirements for a class 1 claim have been satisfied and failure to carry the burden of proof with respect to any one of the elements is fatal to the application. See Shirley & Pearl Warner, supra; Rio Grande Conservancy District, 86 IBLA 41, 42 (1985); Jerry G. Perry, 85 IBLA 93, 94 (1985).

[1] Section 1 of the Color of Title Act, 43 U.S.C. § 1068 (1994), sets forth the requirements that must be met by a claimant in order to receive a patent under the Act:

> The Secretary of the Interior (a) shall, whenever it shall be shown to his satisfaction that a tract of public land has been held in good faith and in peaceful, adverse, possession by a claimant, his ancestors or grantors, under claim or color of title for more than twenty years, and that valuable improvements have been placed on such land or some part thereof has been reduced to cultivation, or (b) may, in his discretion, whenever it shall be shown to his satisfaction that a tract of public land has been held in good faith and in peaceful, adverse, possession by a claimant, his ancestors or grantors, under claim or color of title for the period commencing not later than January 1, 1901, to the date of application during which time they have paid taxes levied on the land by State and local governmental units, issue a patent for not to exceed one hundred and sixty acres of such land upon the payment of not less than $1.25 per acre * * *.

A claim under part (a) of 43 U.S.C. § 1068 (1994) is defined by the Department as a claim of class 1; a claim under part (b) is defined as a claim of class 2. 43 C.F.R. § 2540.0-5(b). Since Maestas' application was a class 1 claim, he must show, inter alia, that the unsurveyed 30 acres in section 4 have "been held in good faith and in peaceful, adverse, possession by [him], his ancestors or grantors, under claim or color of title for more than twenty years."

The burden of establishing that all the requirements of the Act have been met is upon Maestas. Corrine M. Vigil, 74 IBLA 111, 112 (1983). In this case, the missing statutory requirement is a good faith belief in ownership on the part of Appellant. We find that Appellant's lessor-lessee relationship with BLM, coupled with his failure to pay taxes on the land consistent with his status as a lessee, militates against a finding of a good faith belief that the land belonged to him.

WWWVersion

[2] An essential element of a color-of-title claim is the good faith requirement. Kim C. Evans, 82 IBLA 319, 321 (1984); Lawrence E. Willmorth, 64 IBLA 159, 160 (1982). Good faith under the Color of-Title Act requires that a claimant and his predecessors honestly believe that they were invested with title. E.g., Hal H. Memmott, 77 IBLA 399, 403 (1983); Carmen M. Warren, 69 IBLA 347, 350 (1982); Lawrence E. Willmorth, supra. In order to determine whether the claimant honestly believed that he was seised with title, the Department may consider whether such belief was unreasonable in light of the facts then actually known to the claimant. E.g., Hal H. Memmott, supra; Carmen M. Warren, supra; Minnie E. Wharton, 4 IBLA 287, 295-96, 79 I.D. 6, 10 (1972), rev'd on other grounds, United States v. Wharton, 514 F.2d 406 (9th Cir. 1975).

If the appellant knew that he was not acquiring title to the subject land, then he is barred from relief under the Color-of-Title Act. Kim C. Evans, supra at 321; Jacob Dykstra, 2 IBLA 177, 180 (1971). Knowledge of Federal ownership of the land negates the requisite good faith. 43 C.F.R. § 2540.0-5(b); United States v. Wharton, supra at 408; Day v. Hickel, 481 F.2d 473, 476 (9th Cir. 1973). In the instant case, Appellant, and before him his father, has held Federal grazing privileges on the land since 1974. Possession of a Federal grazing lease by a claimant constitutes acknowledgement of ownership of the land by the United States. Carmen M. Warren, supra at 350; Joe I. Sanchez, 32 IBLA 228, 232 (1977). "[T]here can be no such thing as good faith in an adverse holding, where the party knows he has no title, and that, under the law, which he is presumed to know, he can acquire none by his occupation." Deffeback v. Hawke, 115 U.S. 392, 407 (1885), cited in Purvis v. Vickers, 67 I.D. 110 (1960). Thus, Appellant's grazing privileges indicate his knowledge of Federal ownership of the land, which negates the requisite good faith.

Another defect alleged by BLM in its Decision is the lack of improvements or cultivation on the land. In order to establish a class 1 claim, an applicant must prove, among other requirements, that valuable improvements have been placed on the land or that some part of the land has been reduced to cultivation. E.g., 43 U.S.C. § 1068 (1994); 43 C.F.R. § 2540.0-5(b); Kim C. Evans, supra. For improvements to qualify as valuable improvements, they must have existed on the land at the time the application was filed, and must enhance the value of the land. E.g., Malcolm C. & Helena M. Huston, 80 IBLA 53, 57 (1984); Pedro A. Suazo, 75 IBLA 212, 214 (1983); Lester & Betty Stephens, 58 IBLA 14, 19 (1981). In the instant case, the BLM field examination did not find any valuable improvements or cultivation of the land. Appellant asserts on appeal that he and the other permittees provided "fencing" to preclude cattle from straying from the grazing area. BLM's investigator determined that this was insufficient to constitute a valuable improvement. We disagree. In order for an improvement to constitute a valuable improvement, it must enhance the value of the land for the purpose to which the land is devoted at the time of filing the application. In Virgil H. Menefee, A-30620 (Nov. 23, 1966), the Department concluded that a trail or road constituted a valuable improvement where it was used in connection with grazing activities on the land in question. We find the same rationale to apply here,

WwwVersion

as the fence provided by Appellant enhanced the value of the land for grazing, the purpose to which the land is dedicated. The Decision is modified accordingly.

Because we conclude that Appellant failed to establish a good faith belief that he was seised with title, however, Maestas' class 1 color-of-title application was fatally deficient. As noted above, a claimant's failure to carry the burden of proof with respect to any one of the elements of proof is fatal to the application. E.g., Paul Marshall, 82 IBLA 298, 301 (1984); Kim C. Evans, supra at 323. Accordingly, BLM properly rejected his color-of-title claim.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed as modified.

James P. Terry
Administrative Judge

I concur:

T. Britt Price
Administrative Judge

WWWVersion